

Rel: April 27, 2018

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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2017-2018

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CR-14-0863

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James Ben Brownfield

v.

State of Alabama

Appeal from Jackson Circuit Court  
(CC-02-99.60; CC-02-100.60; and CC-02-101.60)

On Application for Rehearing

KELLUM, Judge.

On December 15, 2017, this Court affirmed the circuit court's denial of James Ben Brownfield's Rule 32, Ala. R. Crim. P., petition for postconviction relief, in which he attacked his 2004 convictions for three counts of capital

CR-14-0863

murder and his resulting sentence of death. On February 27, 2018, Brownfield filed an application for rehearing requesting that we set aside our judgment. Brownfield raises several arguments on rehearing, one of which merits discussion.

Brownfield argues that this Court erred in not addressing his claim that his trial counsel lacked the qualifications necessary to represent him on the capital charges. Brownfield argues that one of his trial counsel, Richard Fricks, had been practicing law for less than 5 years at the time of his appointment and, therefore, that he failed to meet the statutory qualifications for representing a capital defendant as set out in § 13A-5-54, Ala. Code 1975, and that although Gary Hartline, his other trial counsel, had been practicing criminal law for 16 years at the time of his appointment, Hartline's involvement in the case was limited to the penalty phase of the trial and should not be considered in determining whether the requirements in § 13A-5-54 were met. Brownfield also argues that neither Fricks nor Hartline had the requisite experience to represent a capital defendant as mandated by the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003

ed.). According to Brownfield, counsel's lack of qualifications to represent him is "directly relevant to the question of what deference the Court should give to purportedly 'strategic' decisions by inexperienced counsel," "unquestionably supports" a finding that he was denied the effective assistance of counsel, and warrants this Court granting his application for rehearing and reversing the circuit court's denial of his Rule 32 petition. (Brownfield's rehearing brief, p. 74.)

In his initial brief on appeal, Brownfield listed and argued as an issue that his trial counsel were not qualified to represent him. He made the same arguments about counsel's qualifications he now makes on rehearing. However, in arguing counsel's alleged lack of qualifications in his initial brief, and in his reply brief, Brownfield stated that he "does not seek relief solely because his attorneys were not qualified. But this Court should accord less deference to defense counsel's choices in light of their lack of qualifications." (Brownfield's brief, p. 54.) Although the State treated Brownfield's argument as a separate claim for relief and addressed it, because Brownfield made it clear that his

argument about counsel's qualifications was not an independent claim for relief, we did not address it as one in our opinion. However, the fact that this Court did not address Brownfield's argument as a separate claim for relief does not mean that we did not consider counsel's qualifications in evaluating Brownfield's claims of ineffective assistance of counsel.

To the extent that Brownfield now argues on rehearing that counsel's alleged lack of qualifications is a separate claim for relief, that claim is not properly before this Court for review because Brownfield did not raise counsel's qualifications as an independent claim for relief in his initial brief on appeal. See, e.g., Water Works & Sewer Bd. of City of Selma v. Randolph, 833 So. 2d 604, 608 (Ala. 2002) ("The well-settled rule of this Court precludes consideration of arguments made for the first time on rehearing."). To the extent that Brownfield argues on rehearing that this Court failed to consider counsel's qualifications when evaluating his claims of ineffective assistance of counsel, that argument is meritless because we did consider counsel's qualifications when evaluating Brownfield's claims.

CR-14-0863

The other arguments advanced by Brownfield on rehearing have already been addressed by this Court in our original opinion and warrant no further discussion. Accordingly, Brownfield's application for rehearing is overruled.

APPLICATION OVERRULED.

Windom, P.J., and Welch, Burke, and Joiner, JJ., concur.